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IN THE

Supreme Court of the United States

October Term, 1954

No. 356

MOTOR FREIGHT EXPRESS, ET AL.
Appellants

v.

UNITED STATES OF AMERICA

INTERSTATE COMMERCE COMMISSION

BRANCH MOTOR EXPRESS COMPANY
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM

CLARENCE D. TODD
DALE C. DILLON
Attorneys for Branch Motor Express Company, Appellee

TODD, DILLON & CURTISS
944 Washington Building
Washington 5, D. C.

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Pursuant to Rule 16, Paragraph 1 (c) of the Revised Rules of this Court, appellee, Branch Motor Express Company, moves that the judgment of the District Court be affirmed.

This is a direct appeal from a final judgment entered February 17, 1954 by a three judge district court convened pursuant to 28 U. S. C. 2284, 2325, dismissing a complaint seeking to set aside two orders of the Inter-

state Commerce Commission. One of the orders was dated March 17, 1952 and issued in an application proceeding docketed by the Commission as No. MC-10875. The other was dated November 19, 1952 and disposed of two complaint proceedings docketed by the Commission as MC-C-1322 and MC-C-1351. Appellants filed a motion for rehearing in the District Court which motion was denied on May 26, 1952.

Branch Motor Express Company, herein referred to as Branch, filed two applications under the grandfather provisions of the Interstate Commerce Act (49 U. S. C., Sections 306 and 309) requesting in one which was docketed as MC-10875 a certificate to operate as a common carrier of general commodities over specific routes set forth in the application, and in the other, which was docketed as MC-10876, a permit to operate as a contract carrier of garments, garment fabrics and trimmings between points set forth in the application for common carrier authority. The Commission after an informal investigation on June 10, 1938 issued an order in its Docket MC-10875 authorizing the issuance to Branch of a certificate authorizing its operation as a common carrier of general commodities with specified exceptions over the route and serving the points set forth in its application in MC-10875. The Commission after a hearing in MC-10876 found that Branch was a common carrier with respect to all of its operations and on June 6, 1942 issued a consolidated certificate of public convenience and necessity to Branch authorizing the operations described in the order entered June 10, 1938 in MC-10875 and operations authorized in an order which became effective May 17, 1941 in MC-10876. The two grants of authority were set forth in separate sections of the certificate and the certificate was so drafted that it did not authorize Branch to transport garments, and materials and supplies used in the manufacture of garments, between all points on the

routes served as a carrier of general commodities. Thereafter, after a hearing the Commission on April 23, 1945 issued a corrected certificate which eliminated all specific authority for the transportation of garments, and materials and supplies used in the manufacture of garments, and authorized the transportation of general commodities, including garments and materials and supplies used in the manufacture of garments over the regular routes.

The description of the routes in the certificate issued April 3, 1945 consisted of the specification of highways between numerous points in the territory served by Branch. One group of routes was between New York, N. Y., and various points in New Jersey, Pennsylvania and Maryland and immediately following such group was a list of points described as intermediate and off-route points to and from which service was authorized. Another group of routes was between points entirely in Pennsylvania followed by a similar list of intermediate and off-route points. This group was followed by additional route descriptions, each in turn followed by a list of intermediate and off-route points. There were duplications in the use of various segments of highways and some duplication in the listing of specified intermediate and off-route points. Whenever a point was referred to as a junction in a route description, such point was not included in the list of intermediate and off-route points which followed such routes. These route descriptions and lists of points were the same as those set forth in the application in No. MC-10875, which contained the following statement:

> "Wherever in the following route description the expression 'principal intermediate points' is used, it should be understood that included therein are also the junction points between highways which are shown; likewise applicant on June 1, 1935, and since, offered, has offered, and hereafter will offer to serve

between any two or more intermediate points on the routes which it is herein describing other than junction and 'principal intermediate points' in accordance with whatever may be the service requirements of its patrons."

Upon petition of Branch, dated February 13, 1950, for correction, clarification, reconsideration or revision of its certificate, the Commission by order of April 3, 1950 reopened the proceeding solely for the purpose of determining (1) whether applicant is entitled to authority (a) to serve all intermediate points on its authorized routes described in its certificate No. MC-10875, (b) to serve any off-route points other than those described in that certificate and (c) to serve intermediate or off-route points in Pennsylvania within 20 miles of Broad and Market Streets, Philadelphia, Pa., and those within 10 miles of Allentown, Pa., in connection with authorized operations from, to or through Allentown or Philadelphia; and (2) whether the route descriptions set out in the certificate should be modified for the purpose of clarity because of the relocation of highways or change of highway numbers on authorized routes. A further hearing was held on June 9 and on September 6, 7 and 8, 1950, and the Commission, Division 5, on March 17, 1952 issued a report and order authorizing the issuance to Branch of a new certificate which substantially condensed the route description set forth in the prior certificate and authorized service from and to all intermediate points on the described routes.

It is the report and order of Division 5 of the Commission entered March 17, 1952 that appellants seek to have set aside. Appellants do not attack the entire order but seek to have it annulled only to the extent that the Commission authorizes Branch to serve York and Lancaster, Pa. as intermediate points on a route between Reading, Pa. and Baltimore, Md.

The District Court unanimously upheld the Commission's findings and order. The opinion of the Court (Staley, Circuit Judge) points out that, since plaintiffs elected not to introduce the transcript of testimony containing the evidence on which the Commission made its findings of fact, the Court must conclude that its findings are supported by substantial evidence on the record considered as a whole. *Mississippi Valley Barge Lines Co.* v. *United States*, 292 U. S. 282, 286 (1934). The Court then reviews the ultimate findings and order of the Commission in the light of its findings of basic facts and holds that there is a rational basis for the Commission's order.

Appellants in their questions presented (Jurisdictional Statement, page 4) are asking this Court, as they asked the District Court, to substitute its judgment for that of the Commission. They contend that because the Commission in a collateral proceeding, the report in the two complaint proceedings, found that Branch under the certificate issued April 23, 1945 was not authorized to serve York, Pa. as an intermediate point on its route between Baltimore and Reading, that the Commission was prohibited under the provisions of Section 206(a) of the Interstate Commerce Act. (49 U. S. C., Section 306 (a)) from considering any past operations of Branch at York or Lancaster, Pa. as bona fide past operations necessary to support a grant of grandfather authority.

Appellants also contend that the Commission's ultimate findings are legally insufficient or contradictory or based on allegations in an applpication which are not established facts.

The findings of the Commission as pointed out by the District Court are supported by its findings of basic facts. Furthermore, the Commission in this proceeding was acting as an expert administrative tribunal and had the duty

of taking into consideration not only the interests of Branch and competing motor carriers but the interest of the public. Under the circumstances judicial review of the Commission's order was limited and the District Court properly observed such limitations. This Court defined the function of a review court in *The United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515, 535, 66 S. Ct. 687, 698 (1946), as follows:

> "It is not true . . . that '. . . the courts must in a litigated case, be the arbiters of the paramount public interest.'
>
> "This is rather the business of the Commission, made such by the very terms of the statute. The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law."

This Court also stated in *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125, 140, 59 S. Ct. 754 (1939):

> "Only questions affecting constitutional power, statutory authority, and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's orders become incontestable."

There is no substantial question before the Court in this case. The arguments of appellants relate solely to the weight given by the Commission to the facts set forth in its report. Those facts as found by the Commission are (1) Branch had operated over the routes described in its

certificate continuously since a time prior to June 1, 1935; (2) Branch had been serving all intermediate points because its officers believed the certificate authorized such service; (3) Branch had established routes out of Baltimore as early as 1933; (4) two clothing manufacturers testified at a hearing in 1944 that they had used the services of Branch prior to June 1, 1935 and continuously thereafter, and such service included shipments of clothing from Baltimore to York; (5) there was specific proof that Branch had transported shipments from Baltimore to York since prior to the grandfather date over its route through Philadelphia; (6) the application upon which the grant of authority was based claimed that service had been performed to and from the junction points named in the route descriptions; (7) the intermediate points specifically named in the certificate included substantially all of the intermediate points on the described routes.

Since the Commission's order is based upon adequate findings which in turn are supported by substantial evidence it cannot be disturbed by a Court, on review, even though the Court might consider the Commission's action against the weight of evidence. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 56 L. Ed. 308; 32 Sup. Ct. Rep. 108. So long as the Commission acts fairly and reasonably within the grant of power conferred by Congress its orders are not open to judicial review. *Kansas City Southern Ry. Co.* v. *U. S.*, 231 U. S. 423; 58 L. Ed. 296; 34 S. Ct. Rep. 125. This principle was followed by the Court in *Alabama Great Southern RR Co., et al. v. U. S. et al.*, 340 U. S. 216; 71 S. Ct. Rep. 264. The Court said:

> "FOURTH. As to the contention of appellants that the Commission's order is not supported by essential findings of fact, § 14(1) of the Interstate Commerce Act, 49 U.S.C. § 14(1), 49 U.S.C.A. § 14(1), does not require the Commission to make

detailed findings of fact except in a case where damages are awarded. *Manufacturers R. Co.* v. *United States*, 246 U.S. 457, 487, 489-490, 38 S. Ct. 383, 391, 392, 62 L. Ed. 831. The statute requires the Commission only to file a written report, stating its conclusions, together with its decision and order. This the Commission did, and the essential basis of its judgment is sufficiently disclosed in its report. Of course § 14(1) does not relieve the Commission of the duty to make the "basic" or "quasi-jurisdictional" findings essential to the statutory validity of an order. *State of Florida* v. *United States*, 282 U.S. 194, 215, 51 S.Ct. 119, 125, 75 L.Ed. 291; *United States* v. *Baltimore & O. R. Co.*, 293 U.S. 454, 464-465, 55 S.Ct. 268, 272-273, 79 L.Ed. 587. And the basic findings essential to the validity of a given order will vary with the statutory authority invoked and the context of the situation presented. E. g., *United States* v. *Pierce Auto Lines*, 327 U.S. 515, 66 S.Ct. 687, 90 L.Ed. 821; *State of North Carolina* v. *United States*, 325 U.S. 507, 65 S.Ct. 1260, 89 L.Ed. 1760; *City of Yonkers* v. *United States*, 320 U.S. 685, 64 S.Ct. 327, 88 L.Ed. 400; *United States* v. *Carolina Carriers Corp.*, 315 U.S. 475, 62 S.Ct. 722, 86 L.Ed. 971. Here the Commission found, in conformity to the statute invoked, supra note 2, that the differentials prescribed are 'justified as reasonable' and 'necessary and desirable in the public interest.' And 'the report, read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data • • •.' *United States* v. *Louisiana*, 290 U.S. 70, 80, 54 S.Ct. 28, 33, 78 L.Ed. 181. Enough has been 'put of record to enable us to perform the limited task which is ours.' *Eastern-Central Ass'n.* v. *United States*, 321 U.S. 194, 212, 64 S.Ct. 499, 508, 88 L.Ed. 668."

The application which Branch filed in No. MC-10875 was considered by the Commission for the sole purpose of determining the basis for the interpretation placed on the certificate by the officers of Branch. One route description in the certificate issued April 23, 1945, was as follows:

> From Reading over Pennsylvania Highway 73 to junction Pennsylvania Highway 23 (near Blue Ball), thence over Pennsylvania Highway 23 to Lancaster, Pa., thence over U. S. Highway 30 to York, Pa., and thence over U. S. Highway 111 to Baltimore;

Since Lancaster and York were named as junction points in such route description, the officers of Branch believed they were authorized points for service.

CONCLUSION

For the foregoing reasons, we submit that the decision below is correct and that this appeal presents no substantial question. The judgment of the district court should accordingly be affirmed.

Respectfully submitted,

CLARENCE D. TODD
DALE C. DILLON
Attorneys for Branch Motor Express Company, Appellee

TODD, DILLON & CURTISS
944 Washington Building
Washington 5, D. C.